## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force	□ D:	iscourt.	☐ U.S.
Kelly Lyon		Squad #10	201907695		Abuse	□ O	.L.	☐ Injury
Incident Date(s)		Location of Incident:	<b>I</b>	P	recinct:	18 Mc	o. SOL	EO SOL
Wednesday, 08/28/2019 12:03 AM	[	Jerome Avenue and Ri	sse Street		52	2/28/	/2021	10/15/2021
Date/Time CV Reported		CV Reported At:	How CV Reported	d:	Date/Time	Receive	d at CCI	RB
Thu, 08/29/2019 9:52 AM		CCRB	Phone		Thu, 08/29	9/2019 9	9:52 AM	
Complainant/Victim	Type	Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Garry Tuma	20648	959317	052 PCT					
2. POM Steven Torres	19874	962846	052 PCT					
3. SGT Frank Aliffi	00234	939856	052 PCT					
4. POF Gina Mestre	11607	955191	052 PCT					
5. POM James Lindquist	06307	955068	052 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POM Christophe Montera	07819	961961	052 PCT					
2. POM Edgar Rivera	05576	955381	052 PCT					
Officer(s)	Allegatio	on			Inve	estigator	Recon	nmendation
A.POM Garry Tuma	Force: Po § 87(2)(b)	olice Officer Garry Tum	a pointed his gun a	t				
B.POM Steven Torres	Force: Po § 87(2)(b)	olice Officer Steven Tor	res pointed his gun	at				
C.POM Garry Tuma	Force: Po	olice Officer Garry Tum	a pointed his gun a	t § 87(2 (b)	()			
D.POM Steven Torres	Force: Po	olice Officer Steven Tor	res pointed his gun	at § 87	7(2)			
E.POM Garry Tuma	Force: Po	olice Officer Garry Tum	a pointed his gun a	t				
F.POM Steven Torres	Force: Po	olice Officer Steven Tor	res pointed his gun	at				
G.POM Garry Tuma	Abuse: P § 87(2)(b)	olice Officer Garry Tun	na threatened to arro	est				
H.POM Garry Tuma	which § 87	olice Officer Garry Tun (2)(b) vere occupants.	na searched the veh and <sup>§ 87(2)(b)</sup>	icle i	n			
I.SGT Frank Aliffi	Abuse: S	ergeant Frank Aliffi sea	rched § 87(2)(b)					
J.POF Gina Mestre	Abuse: P	colice Officer Gina Mest	tre searched the veh	icle i	n			
K.SGT Frank Aliffi		ergeant Frank Aliffi throuse of force.	eatened § 87(2)(b)					

Officer(s)	Allegation	Investigator Recommendation
L.POM Steven Torres	Abuse: Police Officer Steven Torres frisked § 87(2)(b)	
M.POM Steven Torres	Abuse: Police Officer Steven Torres searched § 87(2)(b)	
N.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi threatened to arrest §87(2)(b)	
O.POM James Lindquist	Abuse: Police Officer James Lindquist searched the vehicle in which \$87(2)(6) was an occupant.	

## **Case Summary**

On August 28, 2019, \$87(2)(5) filed this complaint with the CCRB by phone. Two phase 2 spinoffs were generated under #201908675 and #201908677 and were sent to IAB and the DA.

On August 28, 2019, at approximately 12:03 a.m., in the vicinity of Risse Street and Jerome Avenue in the Bronx, \$87(2)(b) was driving his vehicle with \$87(2)(b) and § 87(2)(b) sitting in the back when they were pulled over by PO Garry Tuma and PO Steven Torres, of the 52<sup>nd</sup> Precinct. PO Tuma and PO Torres approached the vehicle and allegedly drew their guns and pointed them at the vehicle (Allegations A, B, C, D, E, and F: Force - Gun pointed, PO Tuma asked \$87(2)(b) for his driver's license and registration and after \$ refused multiple requests, PO Tuma told §87(2)(b) he could go to jail (Allegation G: Abuse of Authority - Threat of Arrest, \$87(2)(9) At this point, \$87(2)(6) began having a seizure. PO Tuma and PO Torres called for backup and an ambulance. PO Tuma opened the back door of § 37(2)(b) s vehicle and leaned in to check on § 37(2)(b) (Allegation H: Abuse of Authority – Vehicle search, § 87(2)(g) While they were waiting for an ambulance to arrive, Sgt. Frank Aliffi, PO Gina Mestre, PO James Lindquist, PO Christopher Montera, and PO Edgar Rivera of the 52<sup>nd</sup> Precinct arrived on scene. The ambulance arrived and Sgt. Aliffi instructed PO Tuma to search § 87(2)(b) before he entered the ambulance (Allegation I: Abuse of Authority – Search (of person), and § 87(2)(b) exited the vehicle and went to the ambulance. PO Mestre § 87(2)(b) approached \$87(2)(b) s passenger window and asked \$87(2)(b) to step out of the vehicle. PO Mestre reached into \$87(2)(b) s vehicle and picked up an expired MTA bus operator placard from the passenger seat (Allegation J: Abuse of Authority – Vehicle search, \$87(2)(9) refused to exit the vehicle and Sgt. Aliffi said, "We're gonna take you out. There's no debating. Come out of the car or we're going to have to pull you out" (Allegation K: Abuse of Authority – Threat of force, \$87(2)(9) stepped out of the vehicle and PO Torres frisked him and allegedly searched him (Allegation L: Abuse of Authority – Frisk, \$87(2)(g) and Allegation M: Abuse of Authority – Search (of person), § 87(2)(g) went to the back of the vehicle and Sgt. Aliffi asked him how old he was, and he refused to answer. Sgt. Aliffi then said, "If you continue to give us a hard time you can go to jail, and you can explain it to a judge" (Allegation N: Abuse of Authority – Threat of arrest, While everyone was at the back of the vehicle, PO Mestre and PO Lindquist s vehicle (Allegation O: Abuse of Authority – Vehicle search, searched the inside of § 87(2)(b) was then arrested and transported to the 52<sup>nd</sup> Precinct stationhouse. This incident resulted in \$87(2)(b) s arrest (\$87(2)(b) for possession of stolen

and #\$\frac{15}{2}(2)\$ for failing to comply with a lawful order (BR 35).

The investigation obtained eight body-worn camera videos (BR 01, BR 02, BR 03, BR 04, BR 05, BR 06, BR 07, and BR 08; videos and BR 09, BR 10, BR 11, BR 12, BR 13, BR 14, BR 15, and BR 16; summaries) and relevant portions are discussed below. The investigation also obtained one surveillance footage video (BR 17; video and BR 18; summary) and six stationhouse videos (BR 19, BR 20, BR 21, BR 22, BR 23 and BR 24; videos and BR 25; summaries), none of which capture the FADO allegations.

property (**BR 40**). He also received two summonses: #85(2)(b) for an inadequate brake light

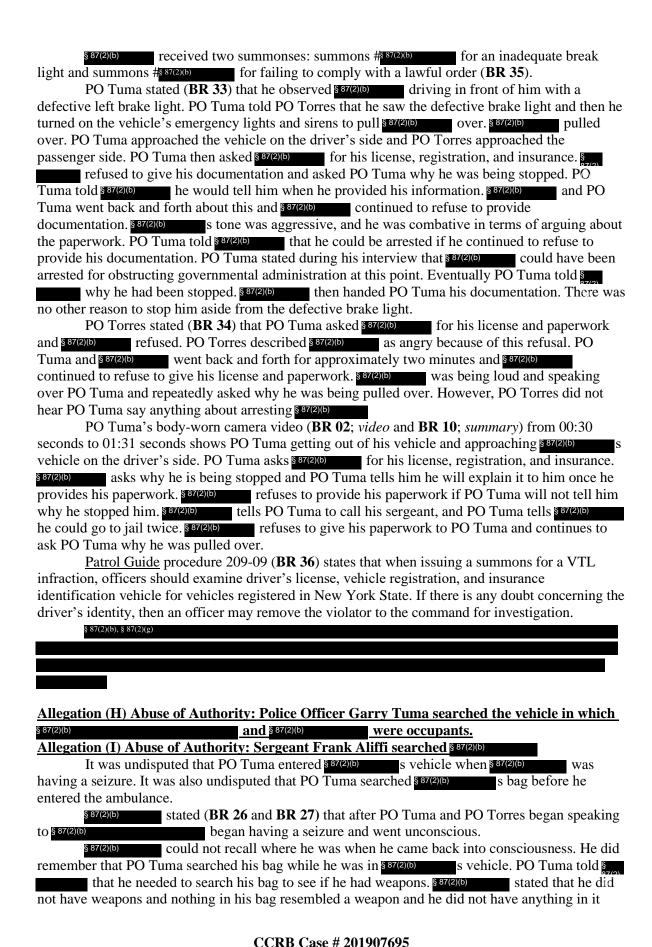
## Findings and Recommendations Allegation (A) Force: Police Officer Garry Tuma pointed his gun at \$67(2)(b) Allegation (B) Force: Police Officer Steven Torres pointed his gun at \$87(2)(b) Allegation (C) Force: Police Officer Garry Tuma pointed his gun at \$87(2)(b) Allegation (D) Force: Police Officer Steven Torres pointed his gun at \$87(2)(b) Allegation (E) Force: Police Officer Garry Tuma pointed his gun at \$87(2)(b) Allegation (F) Force: Police Officer Steven Torres pointed his gun at \$87(2)(b)

Allegation (D) Force: Police Officer Steven Torres pointed his gun at \$87(2)(6) Allegation (E) Force: Police Officer Garry Tuma pointed his gun at 887(2)(6) Allegation (F) Force: Police Officer Steven Torres pointed his gun at \$87(2)(6) It was undisputed that PO Tuma and PO Torres pulled \$87(2)(6) s vehicle over. Whether the officers' guns were pointed was disputed. stated (**BR 26** and **BR 27**) that as PO Tuma and PO Torres approached s vehicle, they had both their flashlights and guns drawn. At this time, §87(2)(b) feeling the symptoms of the seizure he was about to have. PO Tuma asked § 87(2)(b) for his license and registration and who the people in the back of the vehicle were. Both officers still had their guns out and they were pointing them at the vehicle. The officers asked \$87(2)(b) who he was and at this point, \$87(2)(b) began having a seizure and went unconscious. (BR 28, BR 29, BR 30, and BR 31) did not mention any officers ever having drawn or pointed their guns. stated (BR 32) that she thought guns may have been drawn and pointed at everybody. The officers were also holding flashlights. \$87(2)(b) believed the officers' guns triggered § 87(2)(b) s seizure. PO Tuma (BR 33) and PO Torres (BR 34) both denied ever drawing their guns at any point during this incident. PO Tuma's body-worn camera video (BR 02; video and BR 10; summary) as well as PO Torres's body-worn camera video (**BR 01**; video and **BR 09**; summary) cover the incident from the start and capture them initially approaching the vehicle up to the point that \$87(2)(b) seizing. Neither PO Tuma nor PO Torres ever draw or point their guns. Allegation G: Abuse of Authority: Police Officer Garry Tuma threatened to arrest §87(2)(b) It was undisputed that \$87(2)(b) repeatedly refused orders by PO Tuma to provide his license and registration. PO Tuma then told §87(2)(6) he could go to jail. consistently stated (BR 28, BR 29, BR 30, and BR 31) that when PO Tuma approached the vehicle, he asked for \$87(2)(b) s license, registration, and insurance. Before handing over his documents, \$87(2)(b) asked him what the problem was, but PO Tuma would not answer. § 87(2)(b) asked him a second time and said that he had his license, registration, and insurance, but he wanted to know why PO Tuma wanted it. PO Tuma said that they were just doing an investigation and §87(2)(b) asked why. PO Tuma would not tell him, so §87(2)(b) asked him to call a sergeant or a lieutenant. § 37(2)(b) continued to tell him that he would give him the

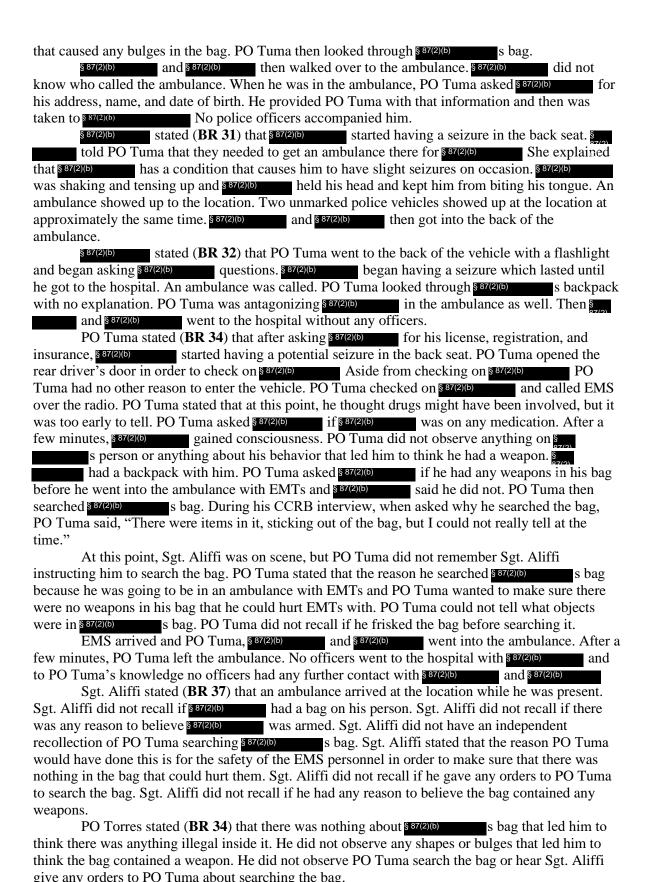
CCRB Case # 201907695

documentation if he would tell him the problem. At this point, PO Tuma said that he would tell him one more time, and if § 87(2)(b) did not provide his documentation, he would go to jail. §

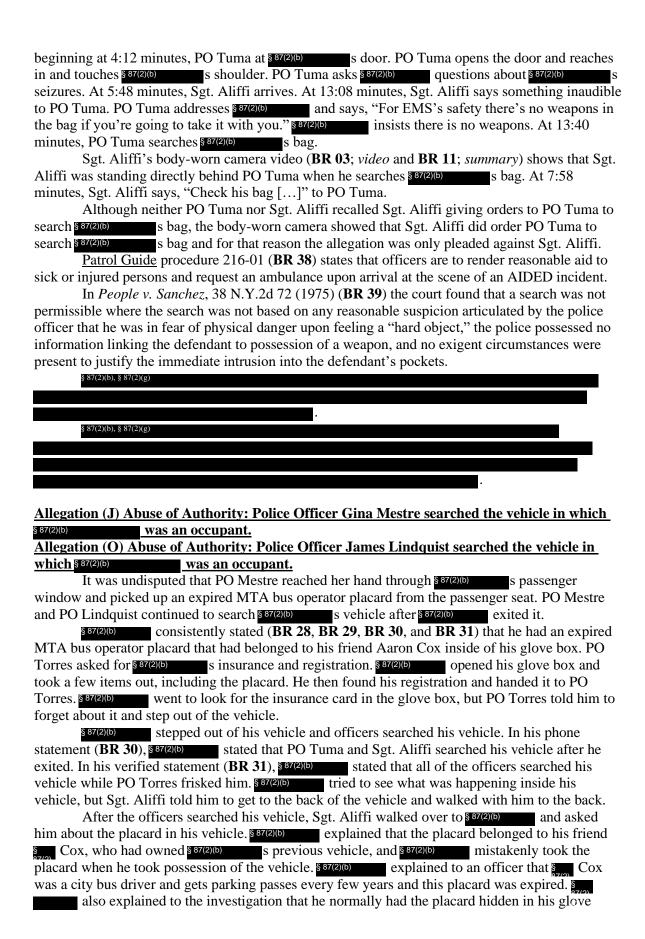
then handed him his driver's license.



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PO Tuma's body-worn camera video (BR 02; video and BR 10; summary) shows,



compartment, not displayed when driving around or parking. During this incident, he took it out when obtaining his vehicle documentation for the officers. Ser(2)(b) said that he could call Cox to have him verify what he was saying, but Sgt. Aliffi did not let him.

was arrested (\$87(2)(b) for possession of stolen property (BR 40).

PO Mestre stated (**BR 41** and **BR 42**) that at some point, some point, opened his glove box. From where she was standing, PO Mestre observed an item that looked to her like a placard. It had an MTA logo on it. PO Mestre asked some if he worked for the city, but he did not answer. It looked to PO Mestre that it was unofficial and looked like it had been printed off of someone's personal computer. The font and lamination on the placard looked homemade to PO Mestre.

PO Mestre added that the expiration date and the positioning of the icons led her to believe the placard was not official. She has had experience with identifying placards from numerous vehicle stops and working with MTA officials as well as other city agencies that use placards. Prior to reaching into the vehicle, PO Mestre did not know for sure that the placard was illegal, but she thought it looked odd and the expiration date was visible to her prior to her reaching in the vehicle.

PO Lindquist stated (**BR 43**) that he did not recall where \$87(2)(b) had the MTA placard. PO Lindquist did not remember who searched \$87(2)(b) searched it and found the placard.

Sgt. Aliffi stated (BR 37) that while (BR 37) was at the back of the vehicle, officers searched his vehicle. Sgt. Aliffi could not recall who searched the vehicle. He knew that officers searched the vehicle because an illegal MTA placard was retrieved from the vehicle. Sgt. Aliffi did not recall if he gave any orders to search the vehicle. Sgt. Aliffi looked into the vehicle, but he did not recall if he broke the plane of the door and actually entered the vehicle.

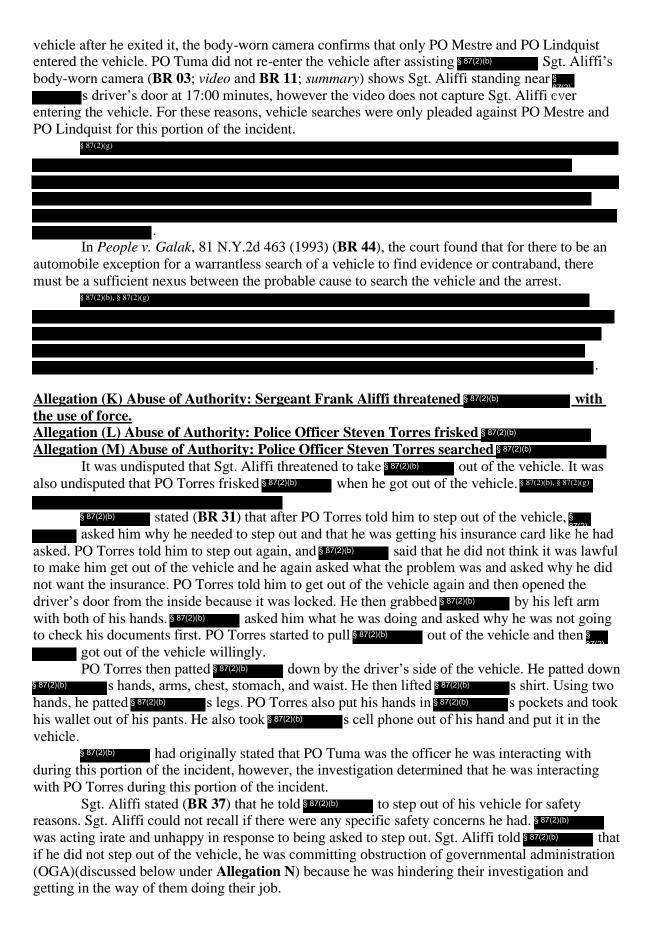
During his interview, Sgt. Aliffi stated they were investigating the smell of marijuana. Sgt. Aliffi could not recall if he communicated with any of the other officers about the smell of marijuana. However, he believed he and his fellow officers were on the same page, but he was unable to provide any reasons as to why he believed they also smelled marijuana. He stated that since he smelled it, he assumed that they smelled it as well.

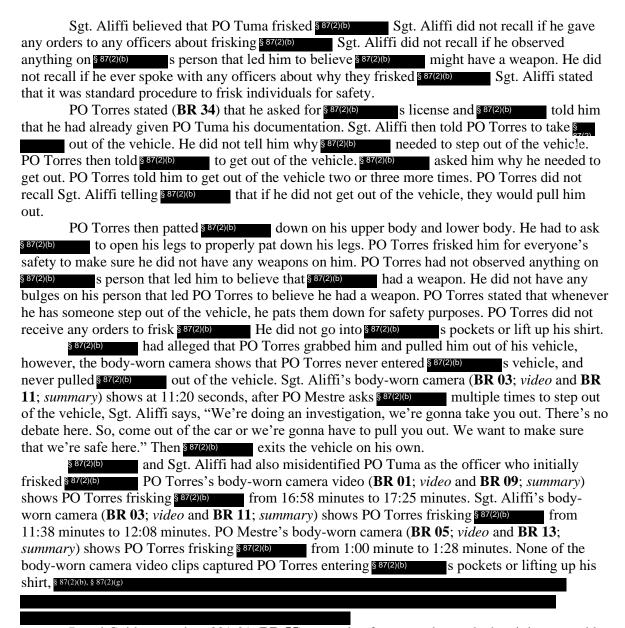
Although Sgt. Aliffi stated during his interview that he smelled marijuana, he never mentions the odor of marijuana in his body-worn camera footage (**BR 03**; *video* and **BR 11**; *summary*), and instead cites alcohol and \$87(2)(b) see seizure as reasons for asking \$97(2)(b) to step out of the vehicle. At 10:54 minutes, Sgt. Aliffi says, "We want to make sure you're not drinking man, your friend is seizuring, you know what I mean." At 11:58 minutes, Sgt. Aliffi tells that he "smells a little intoxicated." At 12:29 minutes, Sgt. Aliffi says, "Your friend is seizuring in the back. You look intoxicated to me." None of the other officers interviewed stated they smelled marijuana. Due to inconsistent statements, \$87(2)(b) denying any odor of marijuana, and Sgt. Aliffi stating that \$87(2)(b) smelled intoxicated in his body-worn camera video, the investigation determined that there was no odor of marijuana emanating from \$7(2)(b) see vehicle.

PO Mestre's body-worn camera (**BR 05**; *video* and **BR 13**; *summary*) shows at 00:45 seconds, PO Mestre reaching into \$87(2)(b) s vehicle through the passenger window and grabbing an MTA placard. She then shines her flashlight in the front passenger side of the vehicle. PO Mestre asks other officers if \$87(2)(b) is an MTA bus operator. At 2:29 minutes, PO Mestre opens \$87(2)(b) s passenger door. PO Lindquist is searching the area in the front driver's seat. PO Mestre then searches the front passenger side and mentions that the placard might be fake. She then opens the back-passenger door and searches the area in the back. At 4:04 minutes, PO Mestre asks \$87(2)(b) if he works for the MTA. He says he does not, and he drives an ambulette. PO Lindquist tells him that he has an MTA placard and he could be arrested for that.

During his interview (**BR 43**), PO Lindquist was shown a portion of PO Mestre's bodyworn camera footage to which he acknowledged that he did search the vehicle, but he did not recall what led up to him searching the vehicle.

Although \$87(2)(b) alleged that Sgt. Aliffi, PO Tuma, and other officers searched his

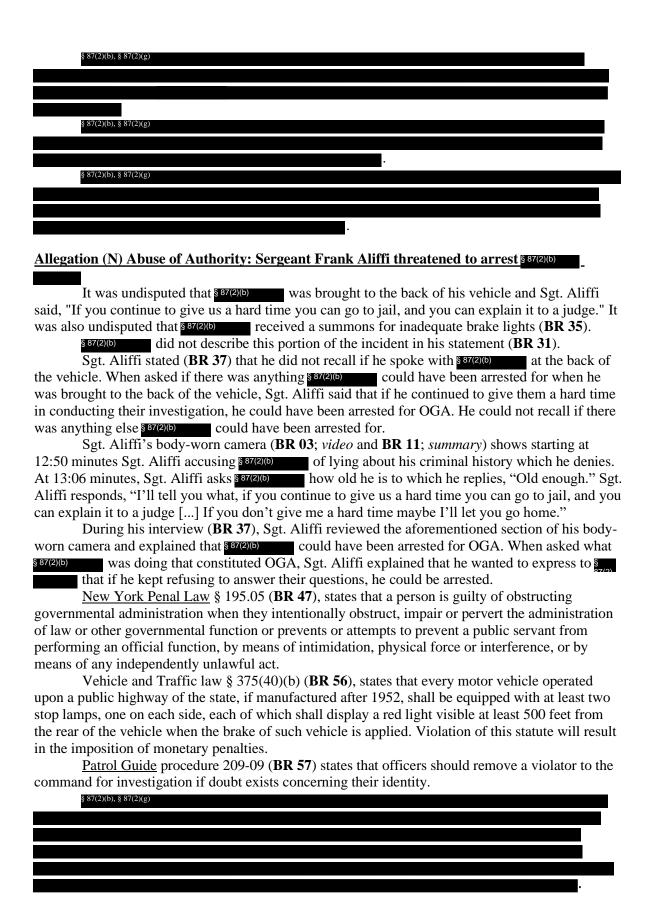




Patrol Guide procedure 221-01 (**BR 55**) states that force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application of force must be reasonable under the circumstance and the following should be considered in determining whether it is reasonable: The nature and severity of the crime/circumstance, actions taken by the subject, duration of the action, immediacy of perceived threat or harm to the subject, MOS, or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to number of MOS, size, age, and condition of subject compared to that of the MOS, subject's violent history, presence of hostile crowd or agitators, and whether the subject is apparently under the influence of stimulants/narcotics.

In *People v. Garcia*, 20 N.Y.3d 317 (2012) (**BR 45**), the court upheld the rule that officers may order occupants out of a vehicle and readily observe their movements due to the unique danger of a partially concealed automobile occupant.

In *People v. De Bour*, 40 N.Y.2d 210 (1976) (**BR 46**), the court found that an officer has the authority to frisk when they reasonably suspect that they are in danger of physical injury by virtue of the detainee being armed.



## **Civilian and Officer CCRB Histories**

8 07(2)(L)	Civilian and Cirical College Installed
§ 87(2)(b)	
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DO T.	and have a manufaction of comics for five many and named a subject in com-
	uma has been a member of service for five years and named a subject in seven
	onal CCRB complaints and 18 allegations, none of which were substantiated.
O T.	§ 87(2)(g)
	orres has been a member of service for four years and named a subject in seven
	onal CCRB complaints and 13 allegations, none of which were substantiated.
0	§ 87(2)(g)
	aliffi has been a member of service for 15 years and named a subject in 12 addition
CCRE	3 complaints and 44 allegations, none of which were substantiated.
0	§ 87(2)(g)
	estre has been a member of service for seven years and named a subject in five
additi	onal CCRB complaints and 14 allegations, two of which were substantiated.
0	CCRB #201706534 involved a substantiated frisk allegation and a citation for
	failing to produce a stop report. The Board recommended Command Discipline
	and the NYPD imposed Command Discipline A.
0	§ 87(2)(g)
PO Li	ndquist has been a member of service for seven years and named a subject in five
additi	onal CCRB complaint and 16 allegations, one of which was substantiated and three
were o	citations for other misconduct.
0	CCRB #201703383 involved a substantiated allegation of a question and citation
	for failing to prepare a memo book and failing to produce a stop report. The bo
	recommended Command Level Instructions and the NYPD imposed formalized
	training.
0	CCRB #201905320 involved a citation for improper use of a body-worn camer
	The NYPD has yet to impose discipline.
0	§ 87(2)(g)
J	
	Mediation, Civil and Criminal Histories
§ 87(2)(b)	
	decimed to mediate uns complaint.
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Squad No.:	<u>10</u>		
Investigator:	Kelly Lyon	Inv. Kelly Lyon	7/30/2021
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